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COMMITTEE ON ENERGY AND COMMERCE

proof." To the contrary, Section 19 gives the Commission discretion to adopt whatever procedures the Commission, in its expertise, deems necessary to administer this section effectively. Accordingly, Section 19(d) simply states that an aggrieved distributor "...may commence an adjudicatory proceeding at the Commission."

By contrast, when Congress wanted to impose procedural requirements under other sections of the Cable Act, it explicitly did so. For example, in Section 3 (b)(8)(c), "Regulation of Unreasonable Rates," Congress instructed the Commission to adopt procedures that "include a minimum showing that shall be required" Similarly, in Section 4(d)(1), "Complaints by Broadcast Stations," Congress specified that a complaint "...shall allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations." And, in Section 5(j)(1), "Complaint," Congress provided, "Such complaint shall allege the manner in which such cable operator has failed to comply with such requirements and state the basis for such allegations."

3. The correct reading of Sections 19(b) and (c) places a central evidentiary obligation on the distributor. Indeed, only the distributor is in the position to demonstrate that particular acts of the programmer "significantly hinder" or "prevent" the distributor from providing programming. For example, if there were a dispute between a programmer and a distributor over the price of a programming service, a pivotal issue might well be whether the distributor was seeking a disproportionately favorable price from the programmer in order to offset inefficiencies in the distributor's business operations. These sorts of facts are exclusively within the knowledge and control of the distributor, and it is accordingly the distributor's obligation to support its facts with adequate proof.

The importance of the distributor's evidentiary obligation under Sections 19(b) and (c) is underscored by the colloquy on the Senate floor during debate on the override of the President's veto of s.12. This colloquy, between Senators Inouye and Kerry, made clear that the distributor's costs of providing programming are a critical factor in determining whether price differences are justified.

Finally, Section 19 was among the most intensely debated provisions of the Cable Act. The final product was the result of a variety of accommodations necessary to secure passage. It is the language of Section 19 itself that reveals Congress' intent, not the characterizations in the letters you have recently received. In short, these letters seek only to achieve by FCC regulation what could not be achieved in Congress. It is of great importance to the integrity of the Commission's processes that you and your colleagues remain mindful of what is in fact written in Section 19 and what is not.

Thank you for your consideration of this important matter of public concern.

Sincerely,

A handwritten signature in cursive script that reads "Bill Richardson". The signature is fluid and extends to the right with a long horizontal stroke.

Bill Richardson
Member of Congress

A handwritten signature in cursive script that reads "Thomas J. Manton". The signature is highly stylized with large loops and flourishes.

Thomas J. Manton
Member of Congress